

LAMAR M. VENSON

v.

DEPARTMENT OF THE AIR FORCE

DOCKET No.

DA07528010279

OPINION AND ORDER

Appellant was removed from his position as Warehouse Worker with the Department of the Air Force, Tinker Air Force Base, Oklahoma, for off-duty misconduct. Specifically, his removal was based upon the following charges: (1) Being under the influence of intoxicants while on Air Force premises, (2) inflicting bodily harm to NCO club patrons, and (3) use of abusive and offensive language to Air Force Police authorities. He filed an appeal from this action with the Board's Dallas Regional Office. The presiding official concluded that the charges were supported by a preponderance of the evidence and that since the incident, which is the basis of this action, took place on the employer's premises, the removal action taken against the appellant was for such cause as will promote the efficiency of the service.

Appellant, then, filed the instant petition for review (PFR) asserting, *inter alia*, that his removal was predicated upon an incident which occurred while he was off duty at the NCO club and that his actions did not adversely affect the efficiency of the service. He argues, therefore, that the presiding official erred in finding that his removal promoted the efficiency of the service.

The petition for review is GRANTED for consideration of the requisite "nexus" between appellant's off-duty misconduct and the efficiency of the service.¹

In an Incident/Complaint Report dated May 29, 1980, the Chief of Security Police reported that on May 2, 1980, after appellant was refused entry to the NCO Club because he could not produce a club membership card, he refused to leave the premises after being requested to do so and subsequently began harassment of some of the patrons who were entering the club. The report states that appellant grabbed the arm of a female patron, Ms. LaVella Rayls, and later grabbed the arm of Mrs. Roland T. Albert, Jr., whereby an altercation ensued between T. Sgt. Roland T. Albert, Jr. and appellant.

The Board has held in *Merritt, supra*, that in personnel actions taken on account of off-duty misconduct a nexus must be established linking the employee's off-duty misconduct with the efficiency of the

¹The issue of the effect of 5 U.S.C. 2302(b)(10) on the pre-existing "efficiency of the service" standard, recodified at 5 U.S.C. § 7513(A), has been resolved in *Merritt v. Department of Justice*, 6 MSPB 493, 509 (1981).

service. In this case the existence of nexus is clear because, although the appellant was off duty, the incident took place on the premises of the employer, involved the disruption of functions which were sponsored by the employer, and resulted in the use of agency personnel for the purpose of dealing with appellant's conduct. While not adversely affecting the performance of his duties as a warehouse worker, appellant's conduct, nonetheless, did adversely affect the security and well-being of other agency employees. Thus, the presiding official properly concluded that the agency had proven that disciplinary action against appellant for this offense promoted the efficiency of the service.

Other allegations of error raised in the petition for review are based on factual determinations on issues which the presiding official fully addressed in his initial decision. The relative arguments and characterizations represent mere disagreement with the findings of fact, credibility determinations, and interpretation of the evidence of the presiding official. They do not establish a misapplication of the proper standard of proof sufficient to warrant a review of the presiding official's fact finding. *Weaver v. Department of the Navy*, 2 MSPB 297, 298-99 (1980). Nor has the appellant otherwise established that the initial decision of the presiding official is based on an erroneous interpretation of statute or regulation. 5 C.F.R. § 1201.115(b).

Accordingly, the initial decision of the presiding official dated December 30, 1980, is **AFFIRMED** as modified by this Opinion and Order, and the agency action is **SUSTAINED**.

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. § 7703. A petition for judicial review must be filed in the appropriate court no later than thirty (30) days after appellant's receipt of this order.

For the Board:

ROBERT E. TAYLOR,
Secretary.

WASHINGTON, D.C., February 23, 1982